IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO.824 OF 2005
WITH
CIVIL APPLICATION NO.1372 OF 2005

M/s. IBP Co. Ltd., Engineering Div. & anr. ..Appellants.
Vs.
The Municipal Corporation of City of Nasik ..Respondent.
...
Mr. M. M. Sathaye for the Appellants.
Mr. V.A. Gangal for the Respondent.
...

CORAM : DR.D.Y.CHANDRACHUD, J.

18th November, 2005.

P.C. :

1. The First Appellate Court has decreed the suit filed by the Municipal Corporation of Nasik, the Respondent herein for unpaid octroi in the amount of Rs.1,07,938/- together with interest at the rate of 6% from the date of institution of the suit. The Appellant has deposited an amount of Rs.1,10,000/- as directed in the interim order of this Court dated 22nd August, 2003, before the Trial Court.

2. In **Indian Aluminium Company Limited v. Thane Municipal Corporation** - (AIR 1992 SC 53) the Supreme Court held that the

grant of a concessional rate of octroi is subject to the observance of the terms and conditions governing the grant of concession. Hence, a failure to file a declaration in Form 14 would disentitle the undertaking to a concessional rate of octroi duty. The Supreme Court held thus :

> "... the concession can be granted only if the raw material is used in the industrial undertaking seeking such concession. For that a verification was necessary and that is why in the rule itself it is mentioned that a declaration has to be filed in Form 14 facilitating verification. Failure to file the same would automatically disentitle the Company from claiming any such concession."

3. Two submissions have been urged in these proceedings; the first being that the demand was barred by limitation and the second that the suit is barred on the principles set out in Order 2 Rule 2 of the Code of Civil Procedure 1908.

4. In so far as the question of limitation is concerned, the suit in the present case was for the recovery of deficit octroi duty from

April 1986 to March 1987. Demand notices were issued on 15th December, 1988 and 22nd March, 1989. The suit came to be filed on 16th December, 1991. No period of limitation is prescribed by the Act. The First Appellate Court has relied upon a judgment of this Court in American Refrigerator Company Limited v. The Pimpri – Chinchwad Municipal Corporation - (1991 (2) Bom.C.R. 642) in holding that even if no period of limitation is prescribed, action for recovery should be taken within a reasonable period of time. Mrs. Justice Sujata Manohar (as the Learned Judge then was) speaking for the Division Bench held thus :

> "It is true that section 142 does not prescribe any period of limitation within which recovery proceedings under Chapter X have to be taken. Nevertheless looking to the scheme for recovery of octroi when an account-current is kept, it would appear that the amount in respect of octroi payable by an importer has to be settled at intervals of one month. For the purpose of checking invoices rule 5 requires the importer to preserve the relevant invoices for a period of one year. Even under Chapter X section 150 sub-section (1) sets out that when any amount becomes due to the Council under this Act, the Chief Officer shall, with the lease practicable delay, cause to be presented to the person liable for the payment thereof a bill for the sum claimed as due. Clearly, therefore, the respondents are required to finalise their claim for octroi dues and present a bill within a reasonable time. Looking to the provisions of the Limitation Act, in our view, a period of 3 years can be considered as a reasonable time within which a bill has to be presented under section 150 of the said Act. It is true that Form 5 requires that an invoice is to be preserved

> only for one year. We have, however, allowed the respondents some further time for the purpose of inspecting the records of the importer and verifying the claim in respect of octroi duty. Even so, in our view maximum indulgence that can be given to the respondents in this connection cannot extend beyond a reasonable time, which, in our view, is a period of three years from the date when the account-current is required to be settled as per section 142."

5. The demand notice and the institution of suit hence were within reasonable time. The suit came to be instituted within a period of three years of the demand notice. It cannot be said that the demand notice was not issued within time.

6. In so far as the issue relating to Order 2 Rule 2 is concerned, the Respondent had filed Special Civil Suit 475 of 1989 for the recovery of an amount of Rs.1,91,351.87 as deficit octroi duty for the period February 1983 to March 1986. This was on the basis of demand notices dated 12th March, 1988. For the aforesaid period, the statement of account was verified by the Octroi Superintendent and thereafter a suit was filed after the issuance of demand notices. The present suit was for a subsequent period and the First Appellate Court was correct in coming to the conclusion that the cause of action in the suit out of which the present proceedings

arise was not the same as that in the earlier suit.

7. In the circumstances, the Second Appeal does not raise any substantial question of law and shall accordingly stand dismissed.

8. On the request of counsel appearing for the Appellants, there shall be a direction to the effect that the ad interim order of stay which was operating in these proceedings shall continue to remain in operation for a period of four weeks.

In view of the disposal of the Second Appeal, the Civil Application is rendered infructuous and is accordingly disposed of.